

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ERNEST A. KAYLOR,

Appellant.

No. 39139-2-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Ernest Kaylor appeals his conviction for third degree rape of a child, arguing that insufficient evidence in the record supports the jury’s verdict. We affirm.¹

We review a claim of insufficient evidence to determine whether when viewing the evidence in a light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Yarbrough*, 151 Wn. App. 66, 96, 210 P.3d 1029 (2009) (quoting *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990)). A sufficiency challenge admits the truth of the State’s evidence and all reasonable inferences therefrom. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff’d*, 95 Wn.2d 385, 622 P.2d 1240 (1980). “In determining the sufficiency of the evidence, circumstantial

¹ A commissioner of this court initially considered Kaylor’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

evidence is not to be considered any less reliable than direct evidence.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

A person is guilty of third degree rape of a child when “the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.” RCW 9A.44.079(1). “Sexual intercourse” has its ordinary meaning and occurs upon any penetration of the vagina by an object, however slight, when committed on one person by another. RCW 9A.44.010(1)(b).

At Kaylor’s jury trial, B.A.H. testified that on or around August 1, 2008, when she was 15 years old and Kaylor was 36 years old, (1) Kaylor gave her a drink that intoxicated her; (2) Kaylor penetrated her vagina with his penis; (3) she attempted to kick Kaylor off but passed out; (4) she woke up with her legs off the bed, her pants across the room, and her underwear twisted; (5) her vagina felt sore; (6) when she went to the bathroom, she experienced discharge that looked like sperm; and (7) Kaylor warned her not to tell anyone about the incident. B.A.H.’s description of Kaylor’s penis matched identically Kaylor’s self-description. Kaylor admitted to Detective Harry Heldreth that he thrust two of his fingers inside B.A.H.’s vagina at least twice. And Kaylor admitted to Sergeant Cheryl Stines that he engaged in seven potentially sexual incidents with B.A.H.

Although Kaylor disputed the allegations and testified that his admissions resulted from the officers’ repeated questioning and his own panic, the trier of fact, not we, decides issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). Based on

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B.A.H.'s testimony, any rational trier of fact could have found the essential elements of third degree rape of a child beyond a reasonable doubt. Accordingly, sufficient evidence supports the jury's verdict finding Kaylor guilty of raping B.A.H. and we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

PENoyer, A.C.J.